



Neutral Citation Number: [2020] EWHC 1925 (Ch)

Case Number **CR-2017-003729**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (Ch D)
IN THE MATTER OF PARAGON OFFSHORE PLC (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 20/07/2020

Before :

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE AGNELLO QC

B E T W E E N :

- (1) NICHOLAS GUY EDWARDS**
- (2) DAVID PHILIP SODEN**
- (3) NEVILLE BARRY KAHN**

(the Former Administrators of Paragon Offshore plc (in liquidation))

Applicants

And

MICHAEL R. HAMMERSLEY

Respondent

Mr Mark Arnold QC (instructed by Weil Gotshal & Manges (London) LLP) for the
Applicants

Mr Michael Hammersley, acting in person

Hearing dates: 23 April 2020, 11 May 2020 and 22 May 2020

JUDGMENT

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10:30 am on 20 July 2020.

Introduction

1. This is the hearing of the application dated 27 February 2020 of the Applicants, the Former Joint Administrators ('the Former Administrators') of the above-named company (Paragon) seeking an order specifying the time for their discharge to take effect pursuant to paragraph 98(2)(c) of Schedule B1 of the Insolvency Act 1986. The administration order was made by Mrs Justice Rose (as she then was) on 23 May 2017. The administration came to an end on 31 May 2019 when it entered into creditors voluntary liquidation with David Philip Soden and Nicholas Guy Edwards being appointed as joint liquidators.

2. The discharge is opposed by Mr Hammersley, a member of Paragon. He filed a 'Preliminary Application' claiming to be a member of Paragon and seeking to oppose the discharge application. By order dated 12 March 2020 of Deputy ICC Judge Barnett, Mr Hammersley was joined as a respondent and he has filed extensive evidence as well as skeleton arguments in support of his opposition. He has put forward many reasons as to why I should not grant the discharge and I will consider the grounds he relies upon below. However before doing so, it is useful to set out the background facts and also to set out the law in relation to discharges under these provisions. Additionally, I have before me notices from various other shareholders who support the position of Mr Hammersley although none of them have applied to be joined.

3. I am grateful to Mr Arnold QC for his submissions and for answering the questions I put to him. I also need to thank Mr Hammersley who presented his arguments carefully and comprehensively whilst at the same time striving in general not to repeat the points he was making.

4. This matter first came before me for final hearing on 23 April 2020 when Mr Hammersley sought to file and rely upon further evidence. That application was

opposed by Mr Arnold on behalf of the Applicants. Additionally, it appeared to me that the time estimate of one hour was inadequate and accordingly I adjourned for a longer hearing date. I also gave permission to Mr Hammersley to file the additional evidence and gave directions enabling the Applicants to reply to the further evidence of Mr Hammersley. The matter then came back before me on 11 May 2020 for half a day. I then heard further submissions on 22 May 2020.

Background facts

The US Chapter 11 proceedings

5. Paragon is the head of a corporate group ('the Group'). According to the witness statement of David Soden, dated 27 January 2020 together with its subsidiaries, it was a leading provider of standard specification offshore drilling services. From about 2014, the depression in global prices contracted the demand for the Group's services.

6. Some time prior to the application to the English High Court for an administration order, Paragon had sought protection pursuant to the Chapter 11 laws of the US, at the US Bankruptcy Court in Delaware. The case was assigned to Judge Sontchi and as I understand, the Judge has heard and dealt with all the applications arising in relation to Paragon (including Paragon 2). On 14 February 2016, Paragon and its Chapter 11 debtors filed the First Chapter 11 Plan with the US Bankruptcy Court. Two further proposed plans followed, being the Second Chapter 11 Plan and the Modified Second Chapter 11 Plan. A Third Plan and then a Fourth Plan were subsequently submitted to the Judge. During this time, as explained in the first witness statement of Mr Todd Strickler dated 16 May 2017 (the Company Secretary), the parties were in negotiations and discussions with various creditors. One of the earlier Plans enabled there to be a distribution to the shareholders. On 2 May 2017, the Fifth Plan was presented to the US Bankruptcy Court after a court ordered mediation which included the ad hoc committee of Term Loan Lenders, the steering committee of RCF Lenders and the Official Committee of Unsecured Creditors. As will become clearer below, the shareholders, as the equity, did not form part of the court ordered mediation because the US Bankruptcy Court had rejected applications to appoint an Official Equity Committee.

7. The terms of the Fifth Plan are set out in summary at paragraph 28 of Mr Strickler's witness statement dated 16 May 2017 and are in summary:-

- (a)** the RCF Lenders (as defined below) and the Term Loan Lenders (as defined below) will receive their pro rata share of:
 - (i)** a \$410 million cash payment;
 - (ii)** senior secured first lien debt (in the face amount of \$85 million);
 - (iii)** 50% of the equity interests in Reorganised Paragon (a Newco to be set up) that are to be distributed pursuant to the UK Sale Transaction ("Reorganised Paragon Equity") (subject to dilution by a management incentive plan); and
 - (iv)** 50% of the Class A Litigation Trust Interests and 25% of the Class B Litigation Trust Interests,

in consideration for a full release of the RCF and the Term Loan;

- (b)** the Senior Noteholders (as defined below) will receive their pro rata share of:
 - (i)** a \$105 million cash payment;
 - (ii)** 50% of the Reorganised Paragon Equity (subject to dilution of a management dilution plan); and
 - (iii)** 50% of the Class A Litigation Trust Interests and 75% of the Class B Litigation Trust Interests,

in consideration for the full release of the Senior Notes; and

- (c)** the holders of General Unsecured Claims will receive cash in an amount equal to the lesser of 30% of their claim or their pro rata share of \$5 million; and
- (d)** there will be no return to the shareholders of Paragon on the basis

that the existing ordinary shares have no economic value, Paragon being insolvent.

8. In essence, the Fifth Plan was a debt for equity swap involving the transfer of certain assets to the creditors, including cash payments, equity and reinstated debt as well as certain other interests, in consideration for the release of certain of Paragon's financial liabilities to creditors. Paragon owed these creditors a total sum of approximately US\$2.4 bn. The Fifth Plan provided for the sale and transfer of Reorganised Paragon. This was a newly incorporated entity created as a subsidiary of Paragon and thereafter its shares were to be distributed amongst Paragon's senior creditors, as set out in the summary of the Fifth Plan above. It was this structure which was the debt for equity swap. Reorganised Paragon was to hold Paragon's interest in the Prospector Group. Paragon had a 100% shareholding in Prospector Offshore Drilling SA ('Prospector')(together with its operating subsidiaries, 'the Prospector Group').

9. The Fifth Plan also included a rationalisation of the inter-company liabilities which allowed for their reduction from US\$820m to US\$500m approximately. These claims against Paragon would be transferred to Reorganised Paragon by means of a Loan Note Instrument. Instead of Paragon owing money to its subsidiaries, these would be transferred to Reorganised Paragon which would take on these claims.

10. On 23 May 2017, the application for an administration order was heard before Mrs Justice Rose (as she then was). As was clear from the evidence submitted in support of the administration order as well as from the skeleton argument filed by Leading Counsel on behalf of Paragon, the details of the Fifth Plan were placed before the Judge. Additionally, the evidence of Paragon's insolvent position was also before the Judge. Mr Hammersley had written a letter to the Judge which was also brought to her attention and considered by the Judge. These matters are clear from reading the witness statement of Mr Strickler, Counsel's skeleton argument as well as having read the transcript of the hearing before Mrs Justice Rose.

11. The evidence of insolvency was set out in the witness statement of Mr Strickler of 16 May 2017. At the date of the hearing for the administration order, the Group had approximately US\$1.4 billion of secured debt, US\$1.02 billion of unsecured notes and US\$14 million in general unsecured claims outstanding. Paragon had therefore debts of approximately US \$2.4 bn and cash of approximately US\$345 million.

12. The principal liabilities of Paragon to non-Group entities as at 16 May 2017 were summarised by Mr Strickler as follows:-

Revolving credit facility (referred to above as the RCF Lenders) – US\$755,764,000
Term loan facility (referred to above as the Term Loan Lenders) – US\$641,875,000
6.75% senior notes (referred to above as the Senior Noteholders) -US\$474,636,199
7.25% senior notes (referred to above as the Senior Noteholders) - \$546,114,112

13. Mr Strickler goes through in his witness statement, the underlying financial documents in relation to the debts set out above. Paragon was at that date the only borrower under the RCF with loans outstanding pursuant to a senior secured revolving credit agreement dated 17 June 2014 between Paragon, Paragon Finance Company each as borrower and the lenders from time to time thereunder with JP Morgan Chase Bank NA as administrative agent (the RCF Agent). Under the terms of the RCF agreement, Paragon and certain of its subsidiaries granted security over substantially all their assets for the benefit of the RCF lenders, with some limited exceptions. Pursuant to a subordination agreement dated 18 July 2014 between the subsidiaries, Paragon and the RCF Agent, the subsidiaries agreed to subordinate their intercompany claims against Paragon to the claims of the RCF lenders. The security package as a whole of the RCF lenders means effectively that they have the benefit of first priority replacement liens over each of the Chapter 11 Debtors' (including Paragon) unencumbered property (including cash) and junior replacement liens on certain of the US Chapter 11 Debtors' unencumbered property. The commencement of the US Chapter 11 proceedings triggered an event of default in respect of the RCF lending.

14. The sums due under the Term Loan arose pursuant to a Guaranty and Collateral Agreement ('GCA' or 'Term Loan Guaranty') whereby the term loan agreement dated 18 July 2014 was provided to Paragon Offshore Finance Company. Under the

terms of the GCA, entered into by Paragon and other Chapter 11 Debtors, Paragon guaranteed the liability under the Term Loan, by way of a primary obligor. This obligation of Paragon was secured to the extent possible after that of the RCF lenders. The commencement of the US Chapter 11 proceedings triggered an event of default for the Term Loan irrespective as to it being granted to Paragon Offshore Finance Company. This led to approximately US\$1.4 bn of secured debt becoming due and payable.

15. Paragon was also the primary borrower in relation to a series of two unsecured senior loan notes, the 6.75% senior loan notes (US\$456,572,000) and the 7.25% senior loan notes (US\$527,010,000). The commencement of the US Chapter 11 proceedings triggered an event of default under these loan notes and the current sums outstanding under the loan notes are set out above.

16. There was also at the time of the application for an administration order the sum of approximately US\$828,440,000 owed by Paragon to other Group companies. As is set out in paragraph 51(a) of Mr Strickler's witness statement, section 4.6 of the Fifth Chapter 11 Plan envisaged that the intercompany debts would be paid, adjusted, continued settled, reinstated, discharged, eliminated or otherwise managed such that the only Intercompany Debt outstanding as at the effective date of the Fifth Chapter 11 Plan would be an amount owed to Reorganised Paragon. As these debts were subordinated to Paragon's obligations pursuant to the RCF lending and the Term Loan, the intercompany liabilities were in essence of no economic value. The general unsecured claims filed against Paragon in the US Chapter 11 are in the aggregate amount of US\$370,098.

17. Paragon's total cash balance of around US\$345m will not be sufficient to cover the total obligations of approximately US\$2.4 bn. The 2016 accounts show a net deficiency of US\$1,097,534,000. In his grounds of opposition to the discharge, Mr Hammersley seeks to challenge the deficiency and also guaranty indebtedness. I will deal with these issues below.

18. The purpose of the administration was to effect and carry out the terms of the approved US Chapter 11 Fifth Plan. This required the debt for equity swap which was

a term of the Fifth Plan. As is explained in the witness statement of Mr Strickler, the debt for equity swap required a new company (Reorganised Paragon) to be created as a direct subsidiary of Paragon. Under the law in this jurisdiction, it is not possible for Paragon to amend its articles and seek to issue new equity to creditors under the US Chapter 11 proceedings without shareholder consent. As is set out in the witness statement of Mr Strickler (as well as in the Chapter 11 Fifth Plan), Paragon is insolvent. Accordingly, as set out by Mr Strickler, Paragon's equity has no value and therefore the board of directors of Paragon considers that it is neither necessary nor appropriate to seek shareholder consent. The value of Paragon and the Group is held for the benefit of creditors. The granting of the administration order would therefore enable the proposed administrators to carry out the UK Sale which was part of the Fifth Plan thereby enabling the debt for equity swap to occur without shareholder consent. These issues were raised by Mr Strickler in his witness statement and therefore were before Mrs Justice Rose on 23 May 2017.

19. As I have set out above, all these matters relating to Paragon's insolvency, the proposed UK Sale, and the purpose of the proposed administration were before the learned Judge. Pursuant to paragraph 11 of schedule B1 of the Insolvency Act 1986, in order for the Court to be able to exercise its discretion in paragraph 13 as to whether or not to make an administration order, there are two jurisdictional hurdles. Firstly, the Court has to be satisfied that the company is or is likely to be unable to pay its debts. This requires the Court to be satisfied that either of the insolvency tests, being either 'cash flow' insolvent or 'balance sheet' insolvent, is met (see further paragraph 11(1) and section 123 of the Insolvency Act 1986). Secondly, the Court needs to be satisfied that the administration order is reasonably likely to achieve the purpose of the administration. The Judge was satisfied that these hurdles had been met as she exercised her discretion and made the administration order.

20. There has been no application seeking to appeal from the order of Mrs Justice Rose. That remains the position to date. After the making of the administration order, the Former Administrators effected the UK Sale with the relevant transaction being effective as at 18 July 2017 when the Fifth Plan as modified became effective. The administrators' proposals to creditors were made on 3 August 2017 (this being a time extended by order of Mrs Justice Rose).

21. Meanwhile, the Fifth Plan was approved by Judge Sontchi on 7 June 2017. Mr Hammersley opposed the approval of the Fifth Plan. His objections were dismissed. The Fifth Plan did not provide for any distribution to the shareholders. As I have set out above, it is clear that Judge Sontchi considered not only that Paragon was effectively hopelessly insolvent but that equity was so to speak, ‘out of the money’ significantly. I have set out later on in this judgment passages from the various judgments of Judge Sontchi dealing with this issue.

22. As is set out in the evidence of Mr Soden, dated 27 February 2020, the UK Sale which had been provided for in the Fifth Plan was originally intended to include the sale and transfer to Reorganised Paragon of Paragon’s interest in the Prospector Group. However, the shares in Prospector had been pledged and certain rigs operated by certain Prospector subsidiaries were leased pursuant to sale and leaseback agreements. The relevant necessary consents of the Pledgee and Lessors (SinoEnergy) had not been obtained before the time arrived for the UK Sale to take place. This led to a modified Fifth Plan being presented to Judge Sontchi at a hearing on 17 July 2017. The modifications were approved by the Judge. Mr Hammersley opposed these modifications on various grounds. The Judge rejected all of these grounds. The modifications enabled a Management Agreement to be entered into which would enable Reorganised Paragon to manage the Prospector assets and enjoy the same economic benefits it would otherwise have enjoyed if the transfer of the Prospectors Group shares had taken place. The Management Agreement was not seeking to alter Fifth Plan. The outcome remained the same, being a debt for equity swap.

23. The UK Sale was effected but excluding Prospector. The Transaction was implemented on 18 July 2017, when the Fifth Plan as modified became effective.

24. Paragon and its Prospector subsidiaries thereafter sought fresh Chapter 11 protection as against the threat of pledgee/lessor enforcement (‘Paragon 2’). Prospector had not been a party to the first Chapter 11 proceedings (‘Paragon 1’) This new Chapter 11 process, the Paragon 2 proceedings went before Judge Sontchi on 30 November 2017. Mr Hammersley attended this hearing and again sought the appointment of an equity committee, and subsequently filed a motion to revoke the

order authorising modification of the Fifth Plan. The Judge dismissed his objections. A settlement agreement was entered into between the pledgee/lessor who thereby consented to the transfer of Prospector. This settlement agreement was approved by the US Bankruptcy Court at a hearing on 5 March 2018 before Judge Sontchi. The Paragon 2 proceedings were also dismissed once the settlement agreement had been approved.

25. The Prospector transfer to Reorganised Paragon was then effected by the Former Administrators on 26 March 2018. The consideration for this transfer, as envisaged in the Fifth Plan, was the release of US\$191 unsecured debt owed by Paragon to Reorganised Paragon. This sum was part of what remained of the intercompany liabilities. The position of these intercompany liabilities has been described above at paragraph 16. In accordance with the Fifth Plan and the UK Implementation Agreement (which set out the steps which had to be taken by the Former Administrators to carry out the Fifth Plan) the Loan Note Instrument was entered into in order to reduce Paragon's intercompany liabilities from approximately US\$828 million to US\$500 million and those claims against it to be transferred to Reorganised Paragon. The relevant clauses are section 4.6(a) of the Fifth Plan and clause 6.1(a) of the UK Implementation Agreement. Although I do not have to set out those clauses, they demonstrate, despite the points raised by Mr Hammersley, that the treatment of the intercompany liabilities, was part of the Fifth Plan and is therefore also reflected and implemented by the UK Implementation Agreement.

26. In accordance with their duties and obligations pursuant to Schedule B1, the Former Administrators filed their Progress Report dated 19 June 2018 and thereafter took steps for the realisation of further assets. Four further Progress Reports were filed by the Former Administrators. The Administration order was extended by way of creditor consent on 4 May 2018. In the final Progress Report dated 15 May 2019, the Former Administrators gave notice of the move of Paragon from administration to creditors' voluntary liquidation. The Former Administrators became joint liquidators on 31 May 2019. I do not need to deal with the contents of those reports or the actions of the Former Administrators beyond the period described above, because their conduct after the implementation of the Chapter 11 Fifth Plan by means of the UK Implementation Agreement and related documentation does not form the subject of

the challenges made by Mr Hammersley. The Final Report referred to the Former Administrators seeking to make an application seeking their discharge pursuant to paragraph 98(2)(c) of Schedule B1. That is the application now before me.

Law and Practice relating to discharge pursuant to paragraph 98 Schedule B1

27. The relevant parts of paragraph 98 are as follows –

‘(1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.

(2) The discharge provided by sub-paragraph (1) takes effect –

...

(c) in any case, at a time specified by the court.

(3) ...

(3A)

...

(4) Discharge -

(a) applies to liability accrued before the discharge takes effect, and

(b) does not prevent the exercise of the court’s powers under paragraph 75.’

28. For completeness, the relevant paragraphs of paragraph 75 are as follows :-

‘(1) The court may examine the conduct of a person who –

(a) is or purports to be the administrator of a company; or

(b) has been or has purported to be the administrator of a company.

(2) An examination under this paragraph may be held only on the application of –

(a) ...

(b) ...

(c) the liquidator of the company,

(d) a creditor of the company, or

- (e) a contributory of the company.

- (3) An application under sub-paragraph (2) must allege that the administrator –
 - (a) has misapplied or retained money or other property of the company,
 - (b) has become accountable for money or other property of the company,
 - (c) has breached a fiduciary or other duty in relation to the company,
or
 - (d) has been guilty of misfeasance.
- (4) On an examination under this paragraph into a person's conduct the court may order him –
 - (a) to repay, restore or account for money or property;
 - (b) to pay interest;
 - (c) to contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.
- (5) ...
- (6) An application under sub-paragraph (2) may be made in respect of an administrator who has been discharged under paragraph 98 only with the permission of the court'

29. As Mr Arnold points out, discharge frequently follows very shortly after the administration comes to an end. It is treated as the normal course of events without the administrators being required to demonstrate or establish some prejudice if they do not receive their discharge at a particular time. This is clear from the case of *Re Angel Group [2016] 2 BCLC 509*, a decision of Mrs Justice Rose, where she noted that no cases had been cited which delayed discharge for more than three months. In considering the position relating to when it is not clear whether a claim, if brought would fall within paragraph 75, the learned Judge stated, that in the event that such a claim, '...is not included within para 75, then it is not right for this court to side-step that exclusion by postponing indefinitely the administrators' discharge' (paragraph 48).

It is important to note the interaction as between the discharge provisions and paragraph 75. The latter provision expressly preserves a claim against the administrators even if they have been discharged. The limitation on this ability to pursue former administrators is that, after discharge, an application must be made to the Court for permission to bring any claim pursuant to paragraph 75 against the discharged administrators. In determining whether the Former Administrators should obtain their discharge, I bear in mind that the discharge itself does not deprive a person who can satisfy the Court in relation to an application for permission that such a claim pursuant to paragraph 75 should proceed. I also bear in mind that no paragraph 75 application has been issued. Mr Hammersley seeks in his grounds the appointment of an independent liquidator as part of his objections to the discharge.

The objections raised by Mr Hammersley

30. Mr Hammersley has filed two statements where he sets out his grounds. He has also filed two skeletons dealing with his grounds. His opposition to the discharge is, in my judgment, based upon his belief that the shareholders of Paragon should have received a return under the Fifth Plan and that the fact that no return is forthcoming is something for which the Former Administrators are to blame. There is currently no application pursuant to paragraph 75. Mr Hammersley believes that the interest of Paragon in its Prospector subsidiaries should have been available in some way for the benefit of the shareholders. He therefore maintains that the Former Administrators have transferred the interest of Paragon in Prospector in some way depriving the shareholders from sums ranging from US \$600-700 million. There have been various complaints made to the licensing body of the Former Administrators. Additionally, Mr Hammersley makes some wide ranging allegations as against both solicitors and Counsel acting on behalf of Paragon. I will deal with these later in this judgment, but as I remarked during the course of the hearing, raising the issue of fraud is a very serious matter and full particulars need to be provided. No such particulars appear in Mr Hammersley's evidence. His allegations appear to be that shareholders like himself have some entitlement to assets which belong to Paragon. As the Fifth Plan specifically provides for no return to shareholders, then in some way, he asserts the actions of the Former Administrators has deprived the shareholders of some entitlement. As there has been no such return to shareholders, Mr Hammersley raises

the issue of fraud or fraudulent conduct or misconduct by the Former Administrators. As appears from the matters I deal with below, Mr Hammersley appears to have an inability to accept that the evidence is against him on the issues he raises. In fact, as is demonstrated below, he has raised many of the issues which form the basis of his grounds before me on various occasions before Judge Sontchi who has dealt with them on each occasion by rejecting the arguments of Mr Hammersley. I will go through the grounds he raises, although some of the grounds raised are somewhat interlinked.

(1) Paragon was not insolvent as at the date that the administration order was made (23 May 2017)

31. In his first skeleton, Mr Hammersley submits that Paragon was not insolvent because he says that there is a missing sum of US\$800 million and the existence of this sum means that there would have been a return to the shareholders. He disputes that the sums claimed under the Term Loan Guaranty are liabilities for which Paragon is liable for and that these should have been valued at zero. At paragraphs 11-17 above, I set out in some detail the liabilities of Paragon as presented in the evidence placed before Mrs Justice Rose. I have set out in some detail above the evidence presented by Paragon to the Court on 23 May 2017.

32. On the basis of the evidence before the learned Judge, Mrs Justice Rose made an administration order. Although she did not give a detailed judgment at the end of the hearing, it is clear from reading the transcript that she was satisfied that Paragon was insolvent. That is one of the jurisdictional hurdles set out in paragraph 11 of Schedule B1 and therefore she could not have made the order unless this hurdle was met. She referred to evidence filed during the hearing which makes it clear that this hurdle was met in her judgment. Accordingly, in my judgment, I am not entitled to go behind that judgment. There is no appeal from the order made by the learned Judge.

33. In his skeleton, Mr Hammersley seeks to assert that there was some fraud in relation to the application made. As I stated during the hearing, allegations of fraud need to be properly and carefully particularised. In my judgment Mr Hammersley has failed to substantiate his wide ranging allegations of fraud. For example, he has not explained just why he can assert that Paragon was not liable pursuant to the Term

Loan Guaranty. As I set out above, under its terms, Paragon is liable as a primary obligor. The liability was triggered when the US Chapter 11 (Paragon 1) proceedings were issued. Moreover, this liability was in the evidence as being a liability of Paragon in the Fifth Plan. This was before Judge Sontchi. Mr Hammersley has presented no evidence as to why this is not a liability. Although Mr Hammersley did not attend the hearing before Mrs Justice Rose (which he was entitled so to do) he sent a lengthy letter to which the Judge was expressly referred to by Leading Counsel on behalf of Paragon. Therefore, its contents were considered by her. There are no grounds which entitle me to go behind the judgment of Mrs Justice Rose.

34. Despite my determination that there are presented before me no grounds which would justify going behind the order of Mrs Justice Rose, I nevertheless, also considered carefully the evidence which was presented before the learned Judge relating to the insolvency of Paragon. I have summarised this above in paragraphs 11 – 17. There is in my judgment no evidence to support Mr Hammersley’s assertion that Paragon was in some way not liable for the debts of the subsidiaries which formed part of the Chapter 11 process. I have already referred to the evidence establishing the clear liability arising under the terms of the Term Loan Guaranty. The liabilities set out in the witness statement of Mr Strickler totalled US\$2.4 bn. This was made up with the RCF agreement, the Term Loan Guaranty and two series of senior loan notes. Additionally, there was also a sum of US\$370,098 owed to unsecured creditors. The deficiency is at least US\$1,097,534,000. However there is no evidence of the US\$800 million which Mr Hammersley alleges would have meant that Paragon was solvent. On the sums set out above, even if there was such a sum, it would still not mean that Paragon was solvent. The deficiency is larger than US\$800 million.

35. As Mr Arnold points out, the issue relating to the insolvency of Paragon had been raised frequently by Mr Hammersley in the US bankruptcy proceedings. Judge Sontchi has considered this argument on several occasion and has effectively dismissed the submission that Paragon was solvent. Mr Arnold took me to the specific passages in the hearings before Judge Sontchi.

36. On 27 March 2017, in a hearing before Judge Sontchi, Mr Hammersley sought the appointment of an Official Equity Committee. This would, as I understand, have

enabled funding to be made available for the Committee and its representation as well as other consequences. Judge Sontchi refused to direct the appointment of an Official Equity Committee. The Judge rejected the submission by Mr Hammersley that Paragon was solvent or that there would be any return to the shareholders. In rejecting the application made by Mr Hammersley, the Judge stated as follows, at page 68,

‘ ...The problem is twofold; one, equity is so under the money -- out of the money, excuse me, or underwater that it would take, literally, a billion dollars or significantly more, maybe a billion three, a billion four, to put equity in the money. That is a huge amount of money that will have to come into the estate to put equity in the money based on increasing the amount of value available to get from Noble. Based on my years of experience that’s not a settlement number that you would ever get from Noble. That’s a number that will require litigation and victory.’

Also at page 71, ‘..So I think the adequate representation point is important, but not sufficiently significant to overcome the fact that equity is simply out of the money in this case.’

37. On 7 June 2017, at the hearing when Judge Sontchi approved the Fifth Plan, Mr Hammersley made representations objecting to the approval where he had sought to persuade the Judge that the values provided were effectively such that equity did have an interest. In other words, yet again, Mr Hammersley sought to argue that Paragon was solvent and therefore the shareholders had an interest. As the transcript demonstrates, Mr Hammersley also asked questions of various witnesses challenging the valuations in relation to the value of the assets of Paragon. Mr Hammersley believed, as he sought to persuade me, that there were sums not accounted for which created his US\$800 million. Mr Hammersley’s arguments relating to valuation were rejected by Judge Sontchi .

At page 149 of the transcript the Judge dealt with valuation issues which had been raised.

‘ With regard to the equity committee objections on valuation, again, the evidence here overwhelmingly supports the debtors' valuation. The debtors' valuation was not challenged. The question is not a question of book value; it's a question of reorganization value, it's a question of liquidation value, it's a question of fair market value. And the evidence overwhelmingly indicates there's at least 1.3 to \$1.5 billion of shortfall before you get to a place where there would be any return to equity. That clearly supports cramming down equity. It indicates that unsecured creditors or any creditor senior to equity is not receiving more than they're entitled to. And since they're not getting everything they're entitled

to, equity is not entitled to any recovery.’

38. It is clear from these two passages from the two judgments of Judge Sontchi that the Judge was satisfied not only that Paragon was insolvent, but that he also accepted the valuation evidence which had been presented by the Debtor (Paragon). Before me Mr Hammersley sought to argue on the basis that the book value demonstrated that there were sums unaccounted for by the Former Administrators. Judge Sontchi had already dealt with such an argument. It is in my judgment, as set out by Judge Sontchi, the fair market value which is applicable. This is because a book value in itself does not actually represent the actual value. In my judgment there is simply no evidence which demonstrates that there are further sums available by way of assets of Paragon such that there would be a surplus available to the shareholders.

39. On 30 November 2017, Judge Sontchi heard a further application by Mr Hammersley seeking the appointment of an Official Equity Committee in relation to Paragon 2. The Judge rejected that application and in doing so, he stated in his judgment at page 23 of the transcript,

‘I’m going to deny the motion for a variety of reasons; primarily, on a theory of collateral estoppel, there is nothing that has fundamentally changed as a result of the post-confirmation adjustment in the previous case, and this case as well, that changes the fundamental precept behind the Court’s refusal to appoint an equity committee in the prior case, as well as its confirmation of that plan, which is that equity of PLC is fundamentally out of the money to the tune of over a billion dollars

That included -- that determination included a valuation of the Prospector entities; i.e., the value of the debtors’ equity in those entities as part of the finding that the value was insufficient to put the creditors -- excuse me --to put the equity in the money.

Absent a finding it was a substantial possibility that equity will get a return, the Court cannot and should not appoint an equity committee and burden the negotiation with the participation of a fully-funded entity that is representing a constituent’s fee that is simply out of the money.

Whether the assets of Prospector were restricted or unrestricted and outside or inside the ability of the creditors to attach, the reality is that once the value of those entities

works its way up the equity chain, it gets to PLC and the value of the equity in those entities, even if those entities' assets aren't available, but the equity in those entities is available and part of the assets of PLC that were subject to the previous bankruptcy.

So, there's been no change.

The Court has already heard, in connection with the previous case, arguments with regard to this very issue of valuation, in connection with deciding a motion to appoint equity committee in the previous case, as well as confirming that plan and there is nothing that has changed as a result of the circumstances.

With regard to the administration, the inability to consummate some transactions, that changes the tenet that was underlying the previous decision of the Court. So, under the principles of *collateral estoppel*, the motion to appoint equity committee must be denied.

In addition, forgetting all that, just on the merits of what's in front of the Court today, again, the argument really comes down to a misunderstanding of the law and that is that the equity holders of PLC somehow own equity of the Prospector equities. It's just incorrect as a matter of corporate law.

They have a, as I said on the record during colloquy, they have a residual interest in the assets of PLC, subject to the absolute priority rule. The assets of PLC include the equity in the Prospector equities, either indirect or direct, and that equity in itself is an asset of PLC, not something that is owned by the PLC shareholders.'

40. Mr Hammersley has clearly raised the issue of solvency on all these occasions and in each one, the Court has rejected his argument. In my judgement, Mr Hammersley also fails before me. Put simply, there is no evidence which establishes that Paragon was solvent. Judge Sontchi explained graphically that 'equity was out of the money by a billion dollars'. The position, according to Judge Sontchi had not altered as between the earlier case, being Paragon 1 and Paragon 2. The financial position of Paragon and its insolvency was well established and accepted by both Judge Sontchi as well as by Mrs Justice Rose in making the administration order. Accordingly I reject this argument of Mr Hammersley for the reasons set out above. I note also that Judge Sontchi also dealt with Mr Hammersley's objection based upon his belief that the shares in Prospector were available to the shareholders of Paragon. This again is wrong in law as Judge Sontchi explained, there being no difference in this respect between English insolvency law and that applied by Judge Sontchi. The administration order was validly made, there is no pending appeal and

accordingly the application to discharge is valid and this solvency argument does not prevent the discharge. In so far as there was any doubt, I have set out above excerpts from the judgments of Judge Sontchi.

That Paragon had US\$810 million in cash and it was not liable for the debts of the Restricted Subsidiaries.

41. This argument of Mr Hammersley is somewhat a duplicate of his solvency argument above. I have already dealt with the issue relating to the Term Loan Guaranty. In my judgment, as I have set out above, there is clear evidence that Paragon was liable for the liabilities of the subsidiaries arising pursuant to the Term Loan Guaranty. This was also clear from the terms of the Fifth Plan which was approved by Judge Sontchi.

42. Equally, in those circumstances, the argument that there is US\$ 810 million in cash available for the shareholders is simply unsustainable. Even if such a sum was available, it could only in my judgement be available for the benefit of the creditors of Paragon. Unless the creditors have been paid in full, then there is simply no possible distribution by way of a surplus to the shareholders. Judge Sontchi also reached this conclusion as is clear from the three passages I have set out above in his three judgments. It is clear that the issue of valuation was specifically raised by Mr Hammersley at the hearing on 7 June 2017 (when the Fifth Plan was approved). As Judge Sontchi was satisfied that the valuation evidence was such that Paragon was insolvent, he rejected the opposition of Mr Hammersley to the confirmation of the Fifth Plan. As Mr Arnold submits, it appears that Mr Hammersley may be confusing the balance sheet value of Paragon's assets based on their book value and the lower fair market value attributed to them by Lazard in its valuation prepared and filed in the US Bankruptcy Court proceedings. That valuation was specifically accepted and adopted by Judge Sontchi. This can be seen from the passage from the judgment that I have quoted above. However, Paragon is insolvent to a larger extent than some US\$800 million. I reject this argument of Mr Hammersley as a ground for refusing to grant to the Former Administrators their discharge.

The argument that no honest director would abuse insolvency proceedings of

another sovereign state to prevent shareholders from exercising their rights or conclude that distributing US\$600-700 million in cash to assets for \$0.00 in return was in the best interests of Paragon parent.

43. As I have set out above, I am satisfied that at the time that Paragon was placed into administration, it was insolvent. That was the conclusion of both Mrs Justice Rose and Judge Sontchi. Accordingly this argument of Mr Hammersley is equally unsustainable because the insolvency of Paragon prevents there being any return for shareholders as a matter of law. The shareholders have no such rights as assumed by Mr Hammersley in a case like the one before me where the company is insolvent. There is in any event no distribution to shareholders. The argument of Mr Hammersley that the Former Administrators have distributed a sum of between US\$600 – 700 million for a nil return is, in my judgment, a misunderstanding by Mr Hammersley of the terms of the Fifth Plan. In my judgment, there was no distribution as alleged by Mr Hammersley made by the Former Administrators. Mr Hammersley seeks to rely upon the Loan Note Instrument as being in some way evidence of such a distribution.

44. As I have set out in some detail above, the Fifth Plan as well as the UK Implementation Agreement both dealt with the intercompany liabilities. Each of these contemplated and provided for the rationalisation of the intercompany arrangements. The intercompany liabilities of Paragon were reduced from US\$500 million to US\$309 million. Pursuant to the terms of the Loan Note Instrument, Paragon assumed liability for these reduced intercompany liabilities. Thereafter Paragon transferred its interest in Prospector to Reorganised Paragon. This was simply the debt for equity swap. The consideration was the reduction in the intercompany liabilities.

45. Again Mr Hamersley appears to be relying on the book value of the assets to create the sum of US\$600-700 million when the correct valuation is that of fair market. In any event, the insolvency of Paragon is in my judgment beyond doubt based on the evidence before the US Bankruptcy Court and also before Mrs Justice Rose. As I have observed earlier, even an additional sum of US\$800 million would not cause Paragon to be solvent. Mr Hammersley has not presented any evidence which substantiates his argument in this respect and this argument of his is also

rejected as a ground to prevent the discharge of the Former Administrators. The evidence demonstrates in my judgement that the Former Administrators acted in accordance with the terms of both the Fifth Plan and the UK Implementation Agreement.

The exclusive jurisdiction clause in favour of this Court shows that the post confirmation proceedings initiated by Mr Soden in the United States are invalid.

46. Mr Arnold took me in some detail to the provisions of the Fifth Plan in order to demonstrate that this argument of Mr Hammersley was misconceived. The definition of the ‘corporate restructuring’ in the Fifth Plan states, ‘the reorganisation of the Paragon entities corporate structure in accordance with the Plan and the UK Implementation Agreement and through which (i) certain assets of the Liquidating Subsidiaries will be transferred to certain Transferred Subsidiaries and/or Reorganized Paragon; (ii) the Transferring Subsidiaries will be directly or indirectly transferred to Reorganised Paragon; and (iii) the Liquidating Subsidiaries will remain as direct or indirect subsidiaries of Paragon Parent, to be implemented prior or at the Effective Date.’

47. The UK Implementation Agreement is defined as setting out, ‘...the actions to be taken by the UK Administrators, certain Debtors, and certain Non-Debtor Affiliates of the Debtors to implement the Plan, including the UK Sale Transaction, and the steps required to implement the Corporate Restructuring.’ The UK Sale Transaction is stated to mean ‘a series of transactions, including, among other things, the Corporate Restructuring and a distribution of New Equity Interest to holders of Allowed Secured Lender and Allowed Senior Notes Claims, to be implemented pursuant to the UK Implementation Agreement and in accordance with the Plan as described in Section 5.13’.

48. Section 4.6 dealt with the intercompany claims and stated ‘ The holders of Intercompany claims shall be paid, adjusted, continued , settled, reinstated, discharged , eliminated, or otherwise managed , in each case to the extent determined to be appropriate by a Debtor or any Reorganised Debtor in their sole discretion and in accordance with the terms of the UK Implementation Agreement and the Subordination Agreements. ‘

49. Section 5.13 of the Fifth Plan sets out the roles of the UK Administration and its Administrators,

5.12 U.K. Administrators, U.K. Administration, and U.K. Sale Transaction.

(a) Prior to the Effective Date, the directors of Paragon Parent will seek an administration order from the English Court pursuant to paragraph 13 of Schedule B1 of the Insolvency Act 1986 to appoint the U.K. Administrators to, among other things, implement the U.K. Sale Transaction pursuant to the U.K. Implementation Agreement. Upon appointment, the U.K. Administrators will assume all powers necessary or expedient to effectuate the reorganization contemplated in the U.K. Implementation Agreement (including the power to effect the U.K. Sale Transaction in relation to Paragon Parent).

(b) U.K. Sale Transaction. Prior to or substantially contemporaneously with the Effective Date, following completion of the Corporate Restructuring and pursuant to the terms of the U.K. Implementation Agreement and this Plan, Paragon Parent shall distribute the New Equity Interests to holders of Allowed Secured Lender Claims and Allowed Senior Notes Claims, shall distribute Cash to the holders of certain Allowed Claims, and shall make any other distribution or transfer contemplated by this Plan on behalf of Paragon Parent as described in Article IV hereof in consideration for the release in full of such Allowed Claim. Reorganized Paragon shall enter into the Take Back Debt Agreement, among other documents, with the holders of Allowed Revolver Claims and Allowed Term Loan Claims, as applicable. In furtherance of the foregoing and the implementation of the Plan, the following transactions shall occur in the following order on or prior to the Effective Date (as indicated below).

(i) Prior to the Effective Date, Reorganized Paragon shall be formed and shall enter into the U.K. Implementation Agreement with, among others, Paragon Parent, certain of the Debtors, and certain non-Debtor affiliates of the Debtors. On or prior to the Effective Date and immediately upon completion of the transactions specified below, the Amended By-Laws and Amended Certificate of Incorporation governing Reorganized Paragon shall be in full force and effect.

(ii) Prior to the Effective Date, certain Debtors and non-Debtor affiliates of the Debtors (including Reorganized Paragon) will take such actions as are necessary to implement the Corporate Restructuring in accordance with the terms of this Plan and the U.K. Implementation Agreement. For the avoidance of doubt, all Cash held by Paragon Parent immediately prior to the Corporate Restructuring, other than Cash required to be retained in Paragon Parent as the U.K.

Administration Reserve, shall be available for distribution in accordance with the Plan.

(iii) In accordance with, and subject to the terms of, the treatment sections of the Plan, the following transactions shall occur prior to or substantially contemporaneously with the Effective Date:

(A) Certain rights and obligations of the Liquidating Subsidiaries and the Transferred Subsidiaries arising under or in connection with the Intercompany Claims shall be assigned to and/or assumed by an alternative Liquidating Subsidiary or Transferred Subsidiary (as applicable) pursuant to the terms of the Plan and the U.K. Implementation Agreement.

(B) In consideration for the release in full of certain Allowed Claims and pursuant to the terms of the Plan and the U.K. Implementation Agreement, Paragon Parent shall:

(C) (i) distribute the New Equity Interests to holders of Allowed Secured Lender Claims and Allowed Senior Notes Claims, (ii) distribute Cash to holders of such Allowed Claims, and (ii) make any other distribution or transfer contemplated by this Plan on behalf of Paragon Parent, and Reorganized Paragon shall enter into the Take Back Debt Agreement, among other documents, with the holders of Allowed Revolver Claims and Allowed Term Loan Claims, as applicable.

(D) On or after the Effective Date, the members of the New Board shall be appointed to serve pursuant to the terms of the applicable new organizational documents of Reorganized Paragon.

(E) In connection with the U.K. Sale Transaction, the Debtors shall assume and assign to the Reorganized Debtors all executory contracts and unexpired leases to which the relevant Debtor is a party that are not specifically designated on the Schedule of Rejected Contracts and Leases. The Reorganized Debtors' assumption and assignment of such executory contracts and unexpired leases shall be consistent with the procedures set forth in Sections 8.1 and 8.2 herein, and any requirements to obtain consent in connection with such assumption and assignment shall be deemed satisfied by the Reorganized Debtors' compliance with the procedures outlined in Section 8.2 herein.

(c) Dissolution of Liquidating Subsidiaries. Following the Effective Date, each Liquidating Subsidiary may be liquidated and dissolved in accordance with the applicable laws of the respective jurisdictions in which they are incorporated or organized (the "**Liquidating Subsidiary Wind-Down**"). The U.K. Administrators shall co-ordinate the Liquidating Subsidiary Wind-Down. If the liquidation or winding down of Paragon Parent results in the realization of any residual proceeds available for distribution to creditors of Paragon Parent then such residual proceeds shall be distributed to

Reorganized Paragon and/or certain Transferred Subsidiaries pursuant to the terms of the U.K. Implementation Agreement.

Corporate Restructuring, U.K. Sale Transaction, and Liquidating Subsidiary Wind-Down. Pursuant to sections 363, 1123(a)(5), 1123(b)(4), 1123(b)(6), 1145, and 1146(a) of the Bankruptcy Code, the Confirmation Order shall authorize the Corporate Restructuring and the U.K. Sale Transaction and shall authorize, but not direct, the Liquidating Subsidiary Wind-Down, each under the terms and conditions of the U.K. Implementation Agreement and within the discretion, and consistent with the duties, of the U.K. Administrators.

Upon the Confirmation Date, the Debtors shall be authorized to take any and all actions necessary to consummate the Corporate Restructuring and the U.K. Sale Transaction, and shall be authorized, but not directed, to take any and all actions necessary to consummate the Liquidating Subsidiary Wind-Down, including, for the avoidance of doubt, commencing the U.K. Administration (to the extent not commenced prior to the Confirmation Date).

Sale Free and Clear. On the closing date of the Corporate Restructuring, pursuant to the terms of the U.K. Implementation Agreement and the Confirmation Order, certain Assets shall be purchased by and vested in Reorganized Paragon free and clear of all Claims, Parent Interests, Liens, charges, encumbrances, and other interests, other than the liabilities expressly assumed pursuant to the U.K. Implementation Agreement and those Claims, Liens, charges, encumbrances, and other interests expressly provided or assumed pursuant to the Plan or the documents included in the Plan Supplement.’

50. The US Bankruptcy Court retained jurisdiction on all matters arising pursuant to the Chapter 11 case other than those matters which were administered in the UK Administration, as is set out in some detail in section 5.13 above. Article 11.3 states that the US Bankruptcy Court will no longer have jurisdiction over the UK Implementation Agreement and related matters after the effective date. However article 12.1 makes it clear that the US Bankruptcy Court retains jurisdiction in relation to modification of the Fifth Plan. In any event, Mr Hammersley’s argument that the US Bankruptcy Court lacked jurisdiction is not a matter which this Court can or indeed should deal with. Issues relating to the jurisdiction of the US Bankruptcy Court are matters for that Court. In my judgment it is unnecessary to consider this issue further. Mr Arnold asked me to note that the US Bankruptcy Court itself rejected this lack of jurisdiction complaint when it refused Mr

Hammersley's motion to revoke the order approving modification of the Fifth Plan. This demonstrates that these issues are for the US Bankruptcy Court. In my judgment from the evidence before me, this ground of Mr Hammersley does not lead to the discharge being refused.

The validity of the Loan Note Instrument

51. Mr Hammersley seeks to challenge the validity of this document. He asserts in his second skeleton that this document is invalid because as at the time that it was entered into, the 'debt' had been discharged. He invites me to expunge the Loan Note Instrument pursuant to Rule 14.11 of the Insolvency Rules 2016. In my judgment, there are no grounds in evidence before me which can support what Mr Hammersley seeks pursuant to rule 14.11. The Loan Note instrument formed part of the Fifth Plan as implemented through the UK Implementation Agreement. Clause 5.13 sets out above deals with the intercompany liabilities. Section 6.1(a) of the Fifth Plan specifically set out that the intercompany liabilities were to be dealt with under the terms of the UK Implementation Agreement. Pursuant to clause 6.1(a) of that agreement, the reorganisation steps under that agreement would, '... pay, adjust, continue, settle, reinstate, discharge, eliminate, simplify, rationalise, otherwise manage the intercompany balances as between the parties such that after the effective date....(ii) Reorganised Paragon and/or certain Transferred Subsidiaries will retain certain intercompany claims against Paragon Parent.'

52. In my judgment, the Plan and the UK Implementation Agreement set out the treatment of the intercompany liabilities. These liabilities were not discharged by reason of the Fifth Plan. Mr Hammersley sought to argue that by the terms of US Bankruptcy law, the intercompany liabilities were discharged. There was no evidence before me of US Bankruptcy law. No permission was sought or given for an expert in US Bankruptcy law to be called. In any event had Mr Hammersley's submission been accurate, it would be somewhat surprising that Judge Sontchi had approved the Fifth Plan, its modifications and Paragon 2 without any issue relating to the alleged discharge of the intercompany liabilities. Again, I reject Mr Hammersley's argument as being a valid ground for refusing the discharge of the Former Administrators. Although Mr Hammersley sought to persuade me that I should set aside the Loan Note Instrument pursuant to rule 14.11 of the Insolvency

Rules, there is no application before me enabling me to reach that type of determination. The application before me is one relating to the discharge of the Former Administrators. In my judgment based on the evidence before me, the loan note instrument is valid and merely a part of the Fifth Plan as carried out under the UK Implementation Agreement. I reject this argument as being one which prevents the discharge of the Former Administrators.

The Noble claims

53. Mr Hammersley also sought to rely upon there being a requirement for an independent investigation into these claims which are being run under the terms of the Fifth Plan. These claims have been transferred to a Litigation Trust for the benefit of the creditors. There is a reference to these claims in the passages which I have set out from the judgment of Judge Sontchi. The Judge makes the observation that it is hard to see how the recovery from those claims could raise sufficient sums for there to be an interest in the same by the shareholders. In these circumstances, the Noble claims are not being managed and have not been managed by the Former Administrators. In my judgement this ground of Mr Hammersley is also rejected.

The alleged fraudulent conduct allegations.

54. As I have already set out above, Mr Hammersley makes a series of unsubstantiated and wide reaching allegations relating to what he perceives to be fraudulent conduct by both the Former Administrators, their lawyers and Counsel. I have already set out above that in my judgment there is no evidence before me relating to these unsubstantiated allegations. It appears to me that the real basis of the serious allegations being made by Mr Hammersley is his refusal to accept that the conduct of all these professionals was in accordance with the Fifth Plan and the UK Implementation Agreement. This is because ultimately Mr Hammersley has failed to defeat the Fifth Plan. He remains convinced in his own mind that in some way there should have been a distribution to shareholders. His fraud and misconduct allegations stem in my judgment from his failure to accept that he has failed in his objections to the Fifth Plan, its modification and his continuing failure to obtain the appointment of an equity committee. The passages which I have set out from the judgements of Judge Sontchi demonstrate a failure on the part of Mr Hammersley to accept the contents of the Fifth Plan and its operation. In my judgment, there is not

a shred of evidence supporting these serious yet unsubstantiated allegations. In fact, the evidence before me demonstrates very clearly that the Former Administrators, their lawyers and Counsel, have acted with the professionalism and integrity expected of them. In conclusion none of the grounds raised by Mr Hammersley have any merit as being valid grounds for preventing the discharge of the Former Administrators. I therefore direct that their discharge takes place 14 days after this judgment has been handed down.

Dated